

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE INVESTIGATION	)	
INTO THE PROTEST OF THE WOODS ON	)	
HERRING CREEK HOMEOWNERS' ASSOCIATION	)	
REGARDING THE APPLICATION OF UTILITY	)	PSC DOCKET NO. 04-WW-001
SYSTEMS, INC., FOR A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY TO	)	
PROVIDE WASTEWATER SERVICES TO THE	)	
COMMUNITY (FILED OCTOBER 22, 2004)	)	

**ORDER NO. 6506**

**AND NOW**, this 9<sup>th</sup> day of November, 2004;

**WHEREAS**, on July 6, 2004, new legislation was enacted by the Delaware General Assembly, found at 74 Delaware Laws, Chapter 317, which granted the Delaware Public Service Commission (the "Commission") jurisdiction to regulate certain Wastewater Utilities having more than fifty customers, including the jurisdiction to grant and revoke Certificates of Public Convenience and Necessity ("CPCN"); and

**WHEREAS**, under 74 Delaware Laws, Chapter 317, any person or entity in the business of a Wastewater Utility as of June 7, 2004 and subject to the supervision and regulation of the Commission under the new legislation, is required to obtain from the Commission a CPCN for its existing service areas; and

**WHEREAS**, under the new legislation, the Commission is required to grant a CPCN to an existing Wastewater Utility unless the Commission has actual knowledge at the time of the application that the applicant is in material violation of any provisions of Titles 7, 16 or 26 dealing with the provision of wastewater services; and

**WHEREAS**, the new legislation requires the Commission to attempt to resolve any such dispute over a CPCN application expeditiously; and

**WHEREAS**, on October 1, 2004, Utility Systems, Inc. ("USI") filed an application with the Commission for a CPCN to continue to provide wastewater services to The Woods on Herring Creek Community; and

**WHEREAS**, the Commission has received letters dated August 19, 2004 and October 21, 2004 from The Woods on Herring Creek Homeowners' Association ("Homeowners' Association") requesting that the Commission deny a CPCN to USI and requesting a hearing on the Homeowners' complaints; and

**WHEREAS**, the Homeowners' Association alleges, among other things, that USI has received notices from the Department of Natural Resources and Environmental Control ("DNREC") of violations of Title 7, and that USI is in material violation of the Delaware Code and State regulations governing Wastewater Utilities; and

**WHEREAS**, the Homeowners' Association also alleges that: (a) USI is unwilling and unable to fund needed capital improvements for the wastewater system; (b) it is not a reliable contractor to serve the community; and (c) it has destroyed the system's waste beds through neglect; and

**WHEREAS**, on June 15, 2004, DNREC issued a Notice of Conciliation and Proposed Administrative Penalty Order to USI alleging regulatory violations related to the wastewater system for The Woods on Herring Creek Community dating back to 1997; and

**WHEREAS**, 74 Delaware Laws, Chapter 317 added a new section 203D to Title 26 of the Delaware Code; and

**WHEREAS**, under 26 Del. C. § 203D(j) the Commission may, for good cause, undertake to suspend or revoke a CPCN awarded to a wastewater utility; and

**WHEREAS**, the Commission considers it to be in the public interest and in the interests of USI and its customers to determine not only whether USI should be awarded a CPCN for The Woods on Herring Creek Community, but, also, if USI is entitled to a CPCN, whether the Commission should, at the same time, suspend or revoke the CPCN pursuant to 26 Del. C. § 203D(j); and

**WHEREAS**, the Commission considers that it would be efficient and effective for the Commission Staff to investigate USI's application for a CPCN and the complaints asserted by the Homeowners' Association; and

**WHEREAS**, the Commission believes that the Staff should coordinate with DNREC concerning the allegations of the Homeowners' Association against USI;

Now, therefore, **IT IS ORDERED**:

1. Pursuant to 26 Del. C. § 502 and 29 Del. C. ch. 101, the Commission refers this matter to Hearing Examiner William F. O'Brien. Hearing Examiner O'Brien shall address the application for a Certificate of Public Convenience and Necessity filed by Utilities Systems, Inc., for The Woods on Herring Creek Community, and whether such a Certificate of Public Convenience and Necessity, if awarded,

should be suspended or revoked pursuant to 26 Del. C. § 203D(j). Hearing Examiner O'Brien shall conduct proceedings in this matter and submit a Report to the Commission that will include his proposed findings and recommendations. Such proceedings shall be conducted with due regard for the procedures required by 29 Del. C. §§ 10122-10126. Hearing Examiner O'Brien is delegated the power to provide any direct notice that might be required by these provisions.

2. Pursuant to 26 Del. C. § 102A, Hearing Examiner O'Brien is delegated the power to determine the form and manner of any public notice of this proceeding. Hearing Examiner O'Brien shall provide for such notice in a manner that will reasonably allow affected or interested persons the opportunity to intervene and participate in the proceedings, including the Homeowners' Association. Hearing Examiner O'Brien is specifically delegated, under Rule 21 of the Commission's *Rules of Practice and Procedure*, the authority to grant or deny petitions to intervene.

3. The Commission Staff is directed to investigate the complaints of the Homeowners' Association; the application of Utility Systems, Inc., for a Certificate of Public Convenience and Necessity; whether grounds exist to suspend or revoke such a Certificate of Public Convenience and Necessity; and any related issues. The Commission Staff should also coordinate with the Department of Natural Resources and Environmental Control on the subject of Utility Systems Inc.'s alleged violations of Title 7 of the Delaware Code.

4. The Secretary shall transmit a copy of this Order to the following persons or entities:

- (a) Utilities Systems, Inc.;
- (b) The Woods on Herring Creek Homeowners' Association;
- (c) The Division of the Public Advocate;
- (d) The Secretary of the Department of Natural Resources and Environmental Control; and
- (e) The Director of the Division of Public Health of the Department of Health and Social Services.

4. Francis J. Murphy, Jr., Esquire, is appointed to represent the Commission Staff in this matter.

5. Utility Systems, Inc. is hereby advised that the cost of this proceeding may, under the provisions of 26 Del. C. §114(b)(1), be charged to the utility.

6. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae  
Chair

/s/ Joshua M. Twilley  
Vice Chair

/s/ Joann T. Conaway  
Commissioner

PSC Docket No. 04-WW-001, Order No. 6506 Cont'd.

/s/ Donald J. Puglisi  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

ATTEST:

/s/ Norma J. Sherwood  
Acting Secretary